IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18002 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SALIMBHAI N GHANCHI

Versus

DIRECTOR OF MUNICIPALITIES

Appearance:

1. Special Civil Application No. 18002 of 2003

MR AMAR D MITHANI for Petitioner No. 1

MR LB DABHI, ASST.GOVERNMENT PLEADER for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 21/04/2004

ORAL JUDGEMENT

RULE. Service of rule is waived by learned AGP Shri L.B. Dabhi for the respondent. At the request of

the learned advocates, the petition is finally heard today.

2. The petitioner was a councillor of Dabhoi Municipality. He has been aggrieved by an order dated 9.12.2003, whereby he has been removed from the post of Councillor. Learned advocate Shri Mithani appearing for the petitoner has submitted, in short, that the impugned order is bad in law for the reason that the respondent authority had relied upon a statement made by Shri Iqbalbhai Garasiya, which was made after hearing was concluded and that too in the absence of the petitioner or his advocate. It has been also submitted by him that the respondent has referred to in the said statement in the impugned order. It is the allegation of the petitioner that Shri Iqbalbhai Garasiya had made two different statements at two different points of time. The first statement was made in presence of the petitioner, whereas after the hearing had been concluded, another statement was made by Shri Iqbalbhai Garasiya and the petitioner was never informed about the said statement and the said second statement had been considered by the respondent for removing the petitioner from the post of Councillor.

3. The petitioner has made a specific allegation to that effect in para 14 of the petition.

4. Learned AGP Shri Dabhi appearing for the respondent could not dispute the fact that Shri Iqbalbhai Garasiya had made two statements. The first statement had been made at the time when the petitioner was present, but after the petitioner left the office of the respondent, the matter had been heard and at that time Shri Iqbalbhai Garasiya had made the second statement, which had been relied upon by the respondent.

5. Upon hearing the learned advocates, it is clear that Shri Iqbalbhai Garasiya had made another statement and in the second statement, Shri Garasiya had submitted that because of some pressure, he had made a statement, which was not correct. The second statement was never shown to the petitioner and, therefore, the impugned order dated 9.12.2003, cannot said to be a valid order because it is made in violation of the principles of natural justice. If the respondent wanted to rely upon the second statement made by Shri Iqbalbhai Garasiya, a copy of the said statement ought to have been given to the petitioner so that the petitioner could have dealt

with it at the time of giving his reply, but as it was not done, it can be very well said that the impugned order is violative of the principles of natural justice.

6. For the aforestated reasons, the impugned order is quashed and set aside. Needless to say that it would be open to the respondent to hear the petitioner again on the subject of the show-cause notice dated 27.8.2002. The petitioner shall also give a copy of the second statement made by Shri Iqbalbhai Garasiya to the petitioner before the matter is heard by the respondent.

7. For the aforestated reason, the impugned order dated 9.12.2003 is quashed and set aside. The petition is disposed of as allowed. Rule is made absolute with no order as to costs.

(A.R. Dave, J.)

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